

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/CS/SB 1066

INTRODUCER: Appropriations Committee; Finance and Tax Committee; Community Affairs Committee; and Senator Gruters

SUBJECT: Impact Fees

DATE: March 4, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Fav/CS</u>
3.	<u>Babin</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1066 imposes new requirements related to impact fees. The bill:

- Prohibits the application of a new or increased impact fee to pending permit applications unless the result is to reduce the total impact fees or mitigation costs imposed on the applicant.
- Authorizes local governments with charters that contain provisions providing for school capacity to require contributions related to public education that are used to mitigate impacts not otherwise funded by impact fees or other exactions related to public education facilities, under certain circumstances.
- Provides that impact fee credits are assignable and transferable at any time after establishment within the same impact fee zone or impact fee district, or an adjoining zone or district within the same local jurisdiction.

The Revenue Estimating Conference determined that a prior version of the bill (CS/SB 1066) had an indeterminate, positive or negative, impact on local government impact fee revenues beginning in Fiscal Year 2020-2021. Staff estimates that the changes made by the current version of the bill (CS/CS/CS/SB 1066) do not change the fiscal impact.

The bill takes effect July 1, 2020.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

Local Government Impact Fees

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,⁴ regulatory fees, and special assessments⁵ to pay the cost of providing a facility or service or regulating an activity. As one type of regulatory fee, impact fees are charges imposed by local governments against new development to pay for the cost of capital facilities made necessary by such growth.⁶ Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee. With respect to a school impact fee, the fee is imposed by the respective board of county commissioners at the request of the school board.

Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

³ FLA. CONST. art. VIII, s. 2(b); s. 166.021(1), F.S.

⁴ Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, available at <http://edr.state.fl.us/Content/local-government/reports/lgfh19.pdf> (last visited Feb. 12, 2020). Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.

⁵ *Id.* Special assessments are typically used to construct and maintain capital facilities or to fund certain services.

⁶ *See supra* note 4 at p. 13.

Some local governments impose impact fees specifically for local school facilities.⁷ School districts have authority to impose ad valorem taxes within the district for school purposes⁸ but are not general purpose governments with home rule power⁹ and are not expressly authorized to impose impact fees.¹⁰ Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into an account segregated for funding those improvements.¹¹ Local government ordinances creating the impact fee also typically stipulate that the funds be used only for education capital improvement projects.¹² The credit imposed for impact fees imposed for public educational facilities must be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.¹³

Section 163.31801(4), F.S., provides that any contribution for public education facilities must be credited against education-based impact fees on a dollar-for-dollar basis.

Section 163.31801(5), F.S., provides that if a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under concurrency, developments of regional impact, or otherwise,¹⁴ which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established.¹⁵

Section 163.31801(7), F.S., provides that in any action challenging an impact fee or the government's failure to provide required dollar-for-dollar credits for the payment of impact fees, as provided in s. 163.3180(6) (h) 2.b., F.S.,¹⁶ the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or credit meets the requirements of state legal precedent and s. 163.31801, F.S. The court may not use a deferential standard for the benefit of the government.

Chapter 2019-165, Laws of Fla., amended s. 163.31801, F.S., to codify the 'dual rational nexus test' for impact fees, as articulated in case law. This test requires an impact fee to be proportional

⁷ See, e.g., Miami-Dade County Code of Ordinances ch. 33K, *Educational Facilities Impact Fee Ordinance* and Orange County Code of Ordinances ch. 23, art. V, *School Impact Fees*.

⁸ FLA. CONST. art. VII, s. 9(a), and art. IX, s. 4(b); See s. 1011.71, F.S.

⁹ See FLA. CONST. art. VIII, ss. 1(f)-(g) and 2

¹⁰ Section 163.31801(2), F.S.

¹¹ In Miami-Dade County, the education facility impact fee is paid to the County Planning & Zoning Director, who must then deposit that amount into a specific trust fund maintained by the county. See Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(c). In Orange County, the school impact fee is paid to the county or municipality (if the land being developed is within a municipality), which then transfers the funds collected at least quarterly to the Orange County School District. The District is responsible for maintaining the trust into which the impact fee revenues must be deposited. See Orange County Code of Ordinances, s. 23-142.

¹² See Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

¹³ Section 163.3180(6)(h)2.b., F.S.

¹⁴ Local governments often specify types of credits and how they operate.

¹⁵ This subsection shall operate prospectively and not retrospectively.

¹⁶ With respect to school concurrency applied by a local government, when a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a specified charter school is used as proportionate-share mitigation, the local government is required to credit such contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by a local ordinance for the same need, on a dollar-for-dollar basis.

and have a reasonable connection, or rational nexus, between 1) the proposed new development and the need and the impact of additional capital facilities, and 2) the expenditure of funds and the benefits accruing to the proposed new development.¹⁷ Local governments are prohibited from requiring the payment of impact fees prior to issuing a property's building permit.¹⁸

Additionally, ch. 2019-165, Laws of Fla., established that impact fee funds must be earmarked for capital facilities that benefit new residents and may not be used to pay existing debt unless specific conditions are met.¹⁹ Provisions also authorized a local government to provide an exception or waiver for an impact fee for affordable housing. If a local government provides such an exception or waiver, it is not required to use any revenues to offset the impact.²⁰ Impact fee provisions in s. 163.31801, F.S., do not apply to water and sewer connection fees.

Concurrency and Proportionate Share

Concurrency requires public facilities and services to be available concurrent with the impacts of new development. Concurrency was formerly required for transportation, schools, and parks and recreation, but in 2011, the Legislature made concurrency for these facilities optional with the passage of the Community Planning Act (CPA).²¹ Concurrency on a statewide basis is required only for sanitary sewer, solid waste, drainage, and potable water. However, any local government is authorized to extend the concurrency requirement to additional public facilities within its jurisdiction.²² "Area" or "area of jurisdiction" within the CPA means the total area qualifying under the act, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to incorporated municipalities, all unincorporated lands within a county, or areas comprising combinations of the lands in incorporated municipalities and unincorporated areas of counties.²³

Many local governments continue to exercise the option to impose concurrency on transportation and school facilities. If a local government elects to apply concurrency to either transportation or school facilities, or both, its comprehensive plan must provide principles, guidelines, standards, and strategies, including adopted levels of service,²⁴ to guide its application of concurrency requirements.²⁵ Concurrency is tied to provisions requiring local governments to adopt level-of-service (LOS) standards, address existing deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan.²⁶ Local governments are charged with setting LOS standards within their jurisdictions. The local comprehensive plan must demonstrate, for required or optional concurrency requirements, that the adopted LOS standards

¹⁷ Section 163.31801(3)(f) and (g), F.S.

¹⁸ Section 163.31801(3)(e), F.S.

¹⁹ Section 163.31801(3)(h) and (i), F.S.

²⁰ Section 163.31801(8), F.S.

²¹ Chapter 2011-139, s. 15, Laws of Fla.

²² Section 163.3180(1), F.S.

²³ Section 163.3164(6), F.S.

²⁴ "Level of service" is defined in s. 163.3164(28), F.S., to mean "an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility. Level of service shall indicate the capacity per unit of demand for each public facility."

²⁵ See ss. 163.3180(5) and (6), F.S., with respect to concurrency applied to transportation facilities and to public education facilities, respectively.

²⁶ See generally s. 163.3180, F.S.

can be reasonably met, and infrastructure needed to ensure that the LOS standards are achieved and maintained for a five-year period must be identified.²⁷ Generally, if the LOS standards are not met, development permits may not be issued without an applicable exception.

Proportionate share is a tool local governments may use to require developers to help mitigate the impacts of their development notwithstanding a failure to achieve and maintain the adopted LOS standards.²⁸ Proportionate share generally requires developers to contribute to costs, or build facilities, necessary to offset a new development's impacts.²⁹ Local governments may require proportionate share contributions from developers for both transportation and school impacts.³⁰

A local government applying the concurrency requirement to transportation facilities must comply with the statutory requirements in order to achieve and maintain the LOS standard adopted in the comprehensive plan.³¹ A local government that later repeals transportation concurrency is encouraged to apply statutory criteria to an alternative mobility funding system. A mobility fee-based funding system adopted by a local government must comply with the dual rational nexus test applicable to impact fees.³²

With respect to school concurrency applied by a local government, when a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a specified charter school is used as proportionate-share mitigation, the local government is required to credit such contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by a local ordinance for the same need, on a dollar-for-dollar basis.³³

School Per-Student Station Costs

Each district school board must meet all educational plant space needs of its elementary, middle, and high schools.³⁴ Section 1013.64(6)(b)1, F.S., specifies maximum total costs per student station for each school level as of January 2006, adjusted annually to reflect increases or decreases in the Consumer Price Index. Chapter 2019-23, Laws of Fla., directed the Department of Education in conjunction with the Office of Economic and Demographic Research to review and adjust the cost per student station limits to reflect actual construction costs by January 1, 2020, and annually thereafter.

²⁷ Section 163.3180(1)(b), F.S.

²⁸ Florida Department of Community Affairs (now Department of Economic Opportunity), *Transportation Concurrency: Best Practices Guide*, pg. 64 (2007), available at http://www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (last visited Feb. 12, 2020).

²⁹ *Id.*

³⁰ Sections 163.3180(5) and 163.3180(6), F.S.

³¹ Section 163.3180(5), F.S.

³² Section 163.3180(5)(i), F.S.

³³ Section 163.3180(6)(h)2.b., F.S.

³⁴ Section 1013.64(6), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 163.31801, F.S., to provide that unless the result is to reduce the total mitigation costs or impact fees imposed on an applicant, new or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.

The bill also allows certain local governments to impose both a contribution requirement related to public education facilities and an education-related impact fee without any offsetting credit. In order to qualify, the local government must be governed by a charter that was adopted and implemented before December 31, 2006, and the charter language must contain provisions for providing school capacity. Qualifying local governments must use the contributions related to public education facilities to fund impacts not otherwise funded by education-related impact fees, and the contributions must be based on the difference between the cost per student station as determined by the education facilities impact fee study on which the then-current education-based impact fee is based, subject to s. 1013.64(2)(a)6. and (6)(b), and the cost per student station funded by the education-based impact fee.

Lastly, the bill provides that impact fee credits are assignable³⁵ and transferable at any time after establishment from one development or parcel to another with the same impact fee zone or impact fee district. The credits may be transferred to an adjoining impact fee zone or impact fee district within the same local jurisdiction, but only if the adjoining impact fee zone or impact fee district benefits from the improvement or contribution that generated the credit.

Section 2 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides that municipalities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. However, the mandate requirement does not apply to laws having an insignificant impact,³⁶ which for Fiscal Year 2020-2021 is forecast at approximately \$2.2 million.^{37,38}

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature

³⁵ Assignability is the quality or attribute which permits a thing to be transferred or negotiated. *See* BLACK'S LAW DICTIONARY (6th ed. 1990).

³⁶ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 5, 2020).

³⁷ FLA. CONST. art. VII, s. 18(d).

³⁸ Based on the Florida Demographic Estimating Conference's December 3, 2019 population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 5, 2020).

may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that cities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. As in Subsection 18(a), the mandate requirement does not apply to laws having an insignificant impact.

Under this bill, municipalities and counties that assess impact fees may realize a reduction in impact fee collections (revenues) as a result of the prohibition of applying new or increased fees on pending applications and the requirement to allow the transfers of impact fee credits. If the reduction to collections is determined to exceed \$2.2 million in the aggregate, and no other exemption or exception applies, in order to be binding on the municipalities and counties, the bill must contain a finding of important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature. If a reduction in authority to raise revenues is found and the reduction exceeds the aggregate threshold, final passage of the bill would require approval by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that a prior version of the bill (CS/SB 1066) had an indeterminate, positive or negative, impact on local government impact fee revenues beginning in Fiscal Year 2020-2021. Staff estimates that the changes made by the current version of the bill (CS/CS/CS/SB 1066) do not change the fiscal impact.

B. Private Sector Impact:

The bill's provisions related to assignable and transferable impact fee credits may have an indeterminate impact on holders of such credits or contributions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.31801 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on March 03, 2020:

The committee substitute

- Removes all issues from the bill, except for the following:
 - Retains, without amendment, the language in the CS/CS that provides that new impact fees can only apply to existing applications if the result is to reduce the total mitigation costs or impact fees imposed on an applicant.
 - Inserts new language that allows certain local governments to collect both public education facility contributions and school impact fees under certain circumstances.
 - Amends the impact fee credit transfer provisions to limit credit transfers within the same local jurisdiction.

CS/CS by Finance and Tax on February 18, 2020:

The committee substitute:

- Clarifies that the bill applies to a special district that adopts, collects and administers an impact fee.
- Expands the definition of “infrastructure” to include, for independent special fire control and rescue districts, new facilities as defined in s. 191.009(4), F.S.
- Provides that new impact fees apply to existing applications if the result is to reduce the total mitigation costs or impact fees imposed on an applicant.
- Limits the use of impact fee credits to the same type of public facility for which the impact fee applies located within the geographic boundary of the local government jurisdiction where the impact fee is imposed, as well as a zone or district that receives benefit from the improvement. The committee substitute applies these same restrictions to alternative mobility funding systems as provided for in s. 163.3180(5)(i), F.S.
- Requires, for purposes of impact fee credits, that a benefit be recognized within any zone or district located within five miles of the zone or district where the credit was generated.
- Clarifies that impact fee credits are intended to ensure that impact fees or equivalent contributions are not collected more than once for the same impacts.

- Clarifies that contributions related to the transportation system are creditable against impact fees, mobility fees, or other forms of exactions that are charged to mitigate transportation impacts.
- Further details the composition and duties of the impact fee review committee.

CS by Community Affairs on February 10, 2020:

The committee substitute:

- Provides impact fee related definitions for infrastructure and public facility.
- Establishes a 36-month age-of-data requirement for analysis sources used to calculate impact fees.
- Provides that new or increased impact fees may not apply to current or pending permit applications submitted prior to the effective date of an ordinance imposing new or increased fees.
- Includes contributions within exiting impact fee challenge provisions and makes the challenges applicable to all of ch. 163, F.S.
- Clarifies that impact fee credits are assignable and transferrable within the same impact fee jurisdiction.
- Provides directives on how and when contributions in lieu of impact fees are credited.
- Removes a requirement that an impact fee review committee select an impact fee consultant.

B. Amendments:

None.